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## PPP Legislation

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### ANALYSIS FOR STATE OF ALABAMA

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#### Statute:

[ALA. CODE §§ 23-1-80 to 23-1-95](#)

#### Summary:

Authorizes the Alabama DOT and county commissions to establish toll roads, toll bridges, ferries or causeways or allow for their operation by private parties. No express provision regarding the solicitation or acceptance of unsolicited proposals. Not appropriate to use as a model for PPP enabling legislation.

#### Key Elements of Alabama's PPP Enabling Legislation

Last Updated: September 2005

No.	Issue:	Short Answer:	Sample Provision:
1.	Does the relevant law allow solicited and unsolicited proposals for PPP projects?	No express provision.	
2.	Does the relevant law permit local/state/federal funds to be combined with private sector funds on a PPP project?	No express provision.	
3.	Who has rate-setting authority to impose user fees and under what circumstances may they be changed or otherwise reviewed?		Under §23-1-81(b) and (c), the Alabama DOT and county commissions may fix toll rates. Either may also authorize private licensees to establish and fix toll rates.
4.	Does the relevant law permit TIFIA loans to be used on PPP projects?	No express provision.	
5.	Is the number of PPP projects limited to only a few "pilot" or "demonstration" projects?	No express provision.	
6.	Are there restrictions concerning the geographic location of PPP projects?	No express provision.	
7.	Are there restrictions concerning the particular mode of transportation eligible to be developed as a PPP project (e.g., truck, passenger auto, freight rail, passenger rail)?	Yes.	§23-1-81 discusses only toll roads, toll bridges, ferries and causeways.
8.	Is there a legal requirement to remove tolls after the repayment of project debt?	No express provision.	
9.	Does the relevant law permit the conversion of existing or partially constructed highways into toll roads?	No express provision.	
10.	Is there a restriction that prevents the revenues from PPP projects from being diverted to the state's general fund or for other unrelated uses?	No express provision.	But see §23-1-83, which entitles a county commission to transfer any surplus of the general funds to the county's road fund.

11.	Is prior legislative approval required when an individual PPP proposal is received?	No express provision.	
12.	Are there any similar requirements that subject the PPP proposal or the negotiated PPP agreement to a local veto?	No express provision.	
13.	Does the relevant law permit all kinds of procurements for PPP project delivery? These might include, for example, calls for projects, competitive RFQ and RFPs, qualifications review followed by an evaluation of proposer concepts, use of design build, procurements based on financial terms such as return on equity rather than on price, long-term asset leases for some period of up to 60 years or longer from the time operations commence?	No express provision.	
14.	Are there explicit exemptions/ supplemental procurement authority from the application of the state's general procurement laws?	No express provision.	§23-1-92 discusses bidding selection process involving the lowest reasonable and responsible bidder.
15.	Does the relevant law authorize the public sector to grant long-term leases/franchises for the construction, operation and maintenance of toll facilities?	Yes.	§23-1-81(b) and (c).
16.	Does the public sector have the authority to issue toll revenue bonds or notes?	No express provision.	
17.	Does the public sector have the authority to form nonprofits and let them issue debt on behalf of a public agency?	No express provision.	
18.	Does the relevant public agency have the authority to hire its own technical and legal consultants?	No express provision.	
19.	Does the relevant law permit the public sector to make payments to unsuccessful bidders for work product contained in their proposals?	No express provision.	
20.	Can the agency charge application fees to offset its proposal review costs?	No express provision.	
21.	Does the relevant law allow adequate time for the preparation, submission and evaluation of competitive proposals? Note that the agency should have the authority to establish these deadlines on a case-by-case basis depending on the complexity and scope of the initial proposal or other factors that might promote competition (e.g., more review time during holiday periods).	No express provision.	
22.	Is the public sector required to maintain comparable non-toll routes when it establishes new toll roads?	No express provision.	

<b>23.</b>	Are there any non-compete clause prohibitions?	Yes.	Under §23-1-81(e), no toll bridge may be established over the same watercourse within two miles of any other toll bridge.
<b>24.</b>	Is the authority to enter into PPPs restricted to the state DOT or state turnpike authority or may regional or local entities also do so?		Authorizes the Alabama DOT and county commissions to establish toll roads, toll bridges, ferries or causeways or allow for their operation by private parties.
<b>25.</b>	Does the relevant law specify evaluation criteria for PPP proposals received under a given procurement approach?	No express provision.	
<b>26.</b>	Does the relevant law specify the structure and participants for the review process involving PPP proposals?	No express provision.	
<b>27.</b>	Does the relevant law protect the confidentiality of PPP proposals and any related negotiations in the period prior to execution of the PPP agreement?	No express provision.	
<b>28.</b>	Does the relevant law provide for the ability of the public sector to outsource long-term operations and maintenance and other asset management duties to the private sector?		§23-1-80 states that no contract for the construction or repair of any public roads, bridge or bridges may be made where the payment of the contract price extends over a period of more than 20 years.

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